

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|---------------------------|---|------------------------------------|---------------------------------|
| Investigator: Sara Griffin | Team: Squad #4 | CCRB Case #: 201810201 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 08/08/2018 1:27 AM | Location of Incident: Lenox Road and New York Avenue | Precinct: 67 | 18 Mo. SOL 2/8/2020 | EO SOL 2/8/2020 | |
| Date/Time CV Reported Fri, 12/07/2018 1:11 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Fri, 12/07/2018 1:11 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. POM Christian Cayenne | 02135 | 954620 | PBBS SU |
| 2. POM Matthew Sabella | 03528 | 955429 | PBBS SU |
| 3. SGT Brian Alexander | 03185 | 948599 | PBBS SU |
| 4. POM Alfred Foy | 21496 | 954821 | PBBS SU |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| A.SGT Brian Alexander | Abuse: Sergeant Brian Alexander stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| B.POM Matthew Sabella | Abuse: Police Officer Matthew Sabella stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| C.POM Christian Cayenne | Abuse: Police Officer Christian Cayenne stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| D.POM Alfred Foy | Abuse: Police Officer Alfred Foy stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| E.SGT Brian Alexander | Abuse: Sergeant Brian Alexander frisked § 87(2)(b) | |
| F.SGT Brian Alexander | Abuse: Sergeant Brian Alexander searched § 87(2)(b) | |
| G.SGT Brian Alexander | Abuse: Sergeant Brian Alexander threatened to arrest § 87(2)(b) | |
| H.POM Alfred Foy | Abuse: Police Officer Alfred Foy interfered with § 87(2)(b)'s use of a recording device. | |
| I.POM Christian Cayenne | Abuse: Police Officer Christian Cayenne searched § 87(2)(b)'s purse. | |
| J.POM Matthew Sabella | Abuse: Police Officer Matthew Sabella searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| § 87(4-b), § 87(2)(g) | § 87(2)(b) | |
| § 87(4-b), § 87(2)(g) | § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|------------|-----------------------------|
| § 87(4-b), § 87(2)(g) | | |
| § 87(4-b), § 87(2)(g) | | |
| § 87(4-b), § 87(2)(g) | | |

Case Summary

On December 7, 2018, § 87(2)(b) called the CCRB and filed the following complaint. On August 8, 2018, at approximately 1:27 a.m., Police Officers Christian Cayenne, Matthew Sabella, and Alfred Foy along with Sergeant Brian Alexander of Patrol Borough Brooklyn South Specialized Unit stopped the vehicle § 87(2)(b) and § 87(2)(b) were occupants of in the vicinity of Lenox Road and New York Avenue in Brooklyn (**Allegations A-D: Abuse of Authority, § 87(2)(g)**). Sergeant Alexander frisked § 87(2)(b) (**Allegation E: Abuse of Authority, § 87(2)(g)**). Sergeant Alexander allegedly searched § 87(2)(b) (**Allegation F: Abuse of Authority, § 87(2)(g)**). Sergeant Alexander allegedly threatened to arrest § 87(2)(b) (**Allegation G: Abuse of Authority, § 87(2)(g)**). PO Foy interfered with § 87(2)(b)'s use of a recording device (**Allegation H: Abuse of Authority, § 87(2)(g)**). PO Cayenne searched § 87(2)(b)'s purse (**Allegation I: Abuse of Authority, § 87(2)(g)**). PO Sabella allegedly searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegation J: Abuse of Authority, § 87(2)(g)**). § 87(4-b), § 87(2)(g)

No summonses were issued or arrests were made as a result of the incident.

Findings and Recommendations

Allegation A- Abuse of Authority: Sergeant Brian Alexander stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B- Abuse of Authority: Police Officer Matthew Sabella stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation C- Abuse of Authority: Police Officer Christian Cayenne stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation D- Abuse of Authority: Police Officer Alfred Foy stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that § 87(2)(b) was operating his silver § 87(2)(b) on New York Avenue in Brooklyn, with § 87(2)(b) in the front passenger seat. It is undisputed that after turning onto Lenox Avenue, § 87(2)(b) and § 87(2)(b) were pulled over. The reason for the vehicle stop remains in dispute.

§ 87(2)(b) testified (Board Review 1) that after turning onto Lenox Road, he attempted to parallel park. § 87(2)(b) denied violating any vehicle and traffic laws while making the turn and attempting to park. Two unmarked vehicles, with their sirens activated, one in front and one behind, surrounded § 87(2)(b) vehicle. Sgt. Alexander approached the driver's window and § 87(2)(b) requested the reason for the stop. Sgt. Alexander stated that § 87(2)(b) had been stopped for speeding, failing to signal, and issues with a prior summons issued to § 87(2)(b). During his testimony, § 87(2)(b) denied his license was suspended or that he had missed a court date for a previously issued summons.

§ 87(2)(b) was not cooperative with the investigation and a sworn statement was not obtained.

§ 87(2)(b) provided a cell phone video (Board Review 2) capturing a portion of the vehicle stop. The video was recorded by § 87(2)(b) on § 87(2)(b) cell phone. At approximately 1:05 in the video, § 87(2)(b) is heard telling the officers that the occupants had been informed the reason for the stop was for failing to signal. A male voice (identified by the investigation as PO Cayenne) replies that there is an issue with § 87(2)(b) license possibly being suspended.

Sgt. Alexander testified (Board Review 3) that § 87(2)(b) vehicle was stopped due to a defective brake light. Sgt. Alexander used his discretion to warn and admonish § 87(2)(b) on the Vehicle and Traffic Law violation. Sgt. Alexander had a fly book entry in his memo book (Board Review 4) indicating a vehicle stop involving § 87(2)(b) was conducted on Atlantic Avenue for a defective brake light.

PO Cayenne testified (Board Review 5) that he observed § 87(2)(b) vehicle operating with a defective brake light. PO Cayenne did not have any indication there were any issues with § 87(2)(b) license prior to approaching the vehicle. PO Cayenne stated no summons was issued because it was a minor traffic violation. PO Cayenne confirmed the voice heard in the video mentioning § 87(2)(b) license being suspended was his own and did not know why he made the comment to § 87(2)(b). PO Cayenne had a fly book entry in his memo book (Board Review 6) indicating a vehicle stop involving § 87(2)(b) was conducted for a defective brake light.

PO Sabella testified (Board Review 7) and did not have an independent recollection of the incident. PO Sabella had a fly page entry in his memo book (Board Review 8) indicating that a vehicle stop was conducted with § 87(2)(b) at Lenox Avenue and New York Avenue for a defective brake light.

PO Foy testified (Board Review 9) and did not have an independent recollection of the incident. PO Foy did not have any entry his memo book (Board Review 10) regarding the vehicle stop.

§ 87(2)(g)
§ 87(2)(b)
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§ 87(2)(b)

Allegation E- Abuse of Authority: Sergeant Brian Alexander frisked § 87(2)(b)

Allegation F- Abuse of Authority: Sergeant Brian Alexander searched § 87(2)(b)

§ 87(2)(b) testified (Board Review 1) after providing his license, Sgt. Alexander instructed him to exit the vehicle. Sgt. Alexander frisked his entire body, before placing his hands inside of § 87(2)(b) front and back pants pockets.

In the video provided by § 87(2)(b) (Board Review 2), Sgt. Alexander is observed frisking § 87(2)(b) outside of the driver's side door. At approximately 10 seconds, Sgt. Alexander's hands are observed running along § 87(2)(b) waistband, but it is unclear if they enter the waistband. Sgt. Alexander is not observed placing his hands into § 87(2)(b) pockets.

Sgt. Alexander testified (Board Review 3) that § 87(2)(b) was uncooperative in providing his identification or name. After multiple requests for identification went unanswered, Sgt. Alexander instructed § 87(2)(b) to exit the vehicle, so he could escort him to the rear of the vehicle for identification purposes. Sgt. Alexander did not see any bulges on § 87(2)(b) and did not suspect him of being in possession of a weapon. Before escorting him to the rear, Sgt. Alexander frisked § 87(2)(b) for safety, as he had been unable to identify § 87(2)(b) and would be in close proximity to him at the rear. Sgt. Alexander denied searching § 87(2)(b). Sgt. Alexander confirmed he was the officer observed in the video frisking § 87(2)(b).

PO Cayenne's testimony (Board Review 5) was consistent with Sgt. Alexander's regarding § 87(2)(b) being noncompliant in providing his identification before Sgt. Alexander instructed him to exit the vehicle. PO Cayenne saw Sgt. Alexander frisk § 87(2)(b) outside the vehicle, but denied seeing Sgt. Alexander search § 87(2)(b).

An officer who reasonably suspects that a detainee is armed may conduct a frisk or take other protective measures. People v. Graham, 134 A.D.3d 1047 (2015) (Board Review 11).

§ 87(2)(g) § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)

Allegation G-Abuse of Authority: Sergeant Brian Alexander threatened to arrest § 87(2)(b):

§ 87(2)(b) testified (Board Review 1) that after being frisked and searched, he was instructed to walk to the rear of the vehicle. At the rear, § 87(2)(b) continued to inquire what was going on. Sgt. Alexander instructed § 87(2)(b) to stop being difficult and implied he could "lock up" § 87(2)(b) for no reason.

The video (Board Review 2) provided by § 87(2)(b) captures him at the rear of the vehicle, but the conversation between him and the officers is not audible.

Sgt. Alexander testified (Board Review 3) and did not recall telling § 87(2)(b) if he continued to be difficult that he would be arrested. Based on Sgt. Alexander's observations of § 87(2)(b) during the vehicle stop, there was nothing he could have been arrested for.

PO Cayenne's testimony (Board Review 5) was similar to Sgt. Alexander's except he denied hearing Sgt. Alexander threaten to arrest § 87(2)(b).

§ 87(2)(g)

Allegation H- Abuse of Authority: Police Officer Alfred Foy interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) testified (Board Review 1) that PO Foy shone his flashlight through the rear windshield, in an attempt to interfere with the video § 87(2)(b) was recording on his cell phone from inside of the vehicle.

The video (Board Review 2) provided by § 87(2)(b) is recorded by § 87(2)(b) who is seated in the front passenger seat. After § 87(2)(b) walks to the rear of the vehicle, § 87(2)(b) turns the camera to face the rear of the vehicle. An officer, whom cannot be identified, is seen holding a flashlight in the direction of § 87(2)(b) at the rear. The flashlight remains pointed towards § 87(2)(b) for the remainder of the video. § 87(2)(b) is heard complaining that the officer is shining the flashlight intentionally to interfere with her recording.

PO Foy testified (Board Review 9) and did not have an independent recollection of the incident.

Sgt. Alexander and PO Cayenne both testified (Board Review 3 and 5) and were unable to identify the officers observed in the video holding the flashlight.

NYPD Patrol Guide Procedure 203-29 states, “individuals have a right to lawfully observe and/or record police activity in public places, such as streets, sidewalks, and parks, as well as private property in which the individual has a legal right to be present. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public (Board Review 24).

Unless safety interests or proper performance of police duties require otherwise, the media will be given access as close to police activity as possible, with a clear line of sight and within hearing range of the incident. NYPD Patrol Guide Procedure 212-49 (Board Review 25).

§ 87(2)(g)

Allegation I- Abuse of Authority: Police Officer Christian Cayenne searched § 87(2)(b)'s purse.

§ 87(2)(b) testified (Board Review 1) that PO Cayenne instructed § 87(2)(b) to exit the vehicle and to empty the contents of her purse. § 87(2)(b) complied and emptied her purse onto the vehicle's trunk. The officers looked at the contents with their flashlights, but did not make physical contact with the contents.

The video (Board Review 2) provided by § 87(2)(b) captures PO Cayenne asking § 87(2)(b) to exit the vehicle. The recording ends shortly thereafter.

PO Cayenne testified (Board Review 5) and believed § 87(2)(b) had her purse rested on her lap. PO Cayenne could not see the contents of the purse. PO Cayenne instructed § 87(2)(b) to exit the vehicle and to open her purse. § 87(2)(b) complied and opened her purse. PO Cayenne looked inside the purse, but did not physically touch the contents. The purse contained female affections such as makeup and a wallet. PO Cayenne asked § 87(2)(b) to open her purse because he did not know who § 87(2)(b) was, what she was capable of, and what she might possess. However, there was nothing in particular about § 87(2)(b)'s purse that made him suspicious of it. PO Cayenne denied instructing § 87(2)(b) to empty out her purse. The contents of the purse were looked through with flashlights.

Sgt. Alexander testified (Board Review 3) and denied § 87(2)(b) was instructed to empty the contents of her purse and the contents were looked through with flashlights.

An officer must have probable cause to arrest in order to perform a search. People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 12). A violation of a Vehicle and Traffic Law does not, by itself, give an officer the right to question a motorist about the contents of his vehicle. This intrusion must be justified by specific and articulable facts that lead an officer to suspect criminality. People v. Ocasio, 119 A.D.2d 21 (App. Div. 1986) (Board Review 26)

§ 87(2)(g)

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§ 87(2)(g)

Allegation J- Abuse of Authority: Police Officer Matthew Sabella searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) testified (Board Review 1) that PO Sabella searched his vehicle, including the glove box, center console, and front driver and passenger door storage compartments. § 87(2)(b) believed, but did not observe, PO Sabella searched a backpack in his vehicle, as the zipper was undone, but none of the contents had been removed from the backpack. A box cutter, belonging to an acquaintance, was recovered by PO Sabella during the search. The video (Board Review 2) provided by § 87(2)(b) does not capture the allegation.

PO Sabella testified (Board Review 7) and did not remember searching § 87(2)(b) vehicle or recovering a box cutter.

Sgt. Alexander and PO Cayenne testified (Board Review 3 and 5) and both did not recall seeing PO Sabella search § 87(2)(b) vehicle.

None of the officers' memo books (Board Review 4, 6, 8) noted a vehicle search being conducted.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- § 87(2)(b)
- Sgt. Alexander has been a member of service for eight years and has been a subject in 15 CCRB complaints and 44 allegations, of which seven were substantiated (Board Review 17):
 - 201502721 involved substantiated allegations of vehicle stop, vehicle search, frisk, refusal to provide name/shield, search of person, question, § 87(4-b), § 87(2)(g) against Sgt. Alexander. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - § 87(2)(g)
- PO Cayenne has been a member of service for five years and has been a subject in eight CCRB complaints and 32 allegations, none of which were substantiated. § 87(2)(g) (Board Review 18).
- PO Sabella has been a member of service for five years and has been a subject in three CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g) (Board Review 19).
- PO Foy has been a member of service for five years and has been a subject in five CCRB complaints and 14 allegations, none of which were substantiated. § 87(2)(g) (Board Review 20).

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 22).
- On May 20, 2019, a request was sent to the Office of the New York City Comptroller for any notice of claim filed by § 87(2)(b) regarding the incident. The results will be added to the case file upon their receipt.

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date